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Via Electronic Mail Only

Mayor Tenessa Audette and Members of
the City Council
City of Redding
777 Cypress Avenue
Redding, CA 96001
Email: CityClerk@cityofredding.org

Re: General Plan Update and Final Environmental Impact Report

Dear Mayor Audette and Members of the City Council:

We represent the Shasta Birding Society, a Wintu Country Chapter of the National Audubon Society, with regard to the City's General Plan Update ("proposed General Plan"). On behalf of our client, we respectfully submit these comments to help ensure that City decision-makers fully comply with the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000 *et seq.* and State Planning and Zoning Law, Gov't Code § 65000 *et seq.*

After reviewing the environmental impact report ("EIR") for the Project, we have concluded that it fails to comply with the requirements of CEQA because it relies on vague, unenforceable policies to mitigate the proposed General Plan's significant impacts on the environment, including climate change impacts. It is especially disappointing to see that neither the General Plan nor the EIR *requires* the City to prepare a Climate Action Plan or implement any greenhouse gas ("GHG") reduction measures. Such an omission is unsupportable given what we now know about the urgency of reducing our GHG emissions.

In addition, the proposed General Plan's Introduction includes language suggesting that those General Plan policies that are couched as mandatory are not truly mandatory, and are not meant to provide definitive direction. General Plan at Introduction, Implementing the General Plan, at PDF pages 24. Not only does this

language further undermine the efficacy of the Plan's (already weak) policies designed to mitigate impacts, it also undermines the Plan's ability to guide future development. If none of the policies are truly mandatory, the General Plan simply cannot serve as the "constitution" for future development, as required by State Planning and Zoning Law.

To address these concerns, the City must revise the General Plan and EIR and recirculate for further public review and comment.

I. The Proposed General Plan Violates CEQA.

As explained in detail in comment letters submitted by our client (i.e., letters dated March 27, 2023 and February 15, 2024) and by the Shasta Environmental Alliance (dated February 23, 2024), the EIR improperly relies on vague or unenforceable General Plan policies to mitigate significant impacts. While the City has revised some policies to increase specificity and enforceability, many key policies, including several that are intended to address the Project's impacts on biological resources and greenhouse gas emissions, remain vague, unenforceable, and lacking performance criteria. This approach is flawed and fails to comport with CEQA.

The CEQA Guidelines state that "mitigation measures must be fully enforceable." CEQA Guidelines § 15126.4(a)(2). As discussed in more detail below, the policies this EIR relies on to mitigate impacts do not meet this mandate. Many of the policies in the proposed General Plan are unlikely to reduce the Project's impacts because of their voluntary, flexible, and unenforceable nature. Here, the proposed policies are vague and include directory terms like "as appropriate," "where feasible" and "support," rather than mandatory terms like "require," "reduce," and "deny."

In addition, the EIR never describes *how* the policies would mitigate the General Plan's numerous impacts to sensitive species and habitat and to impacts related to climate change. Consequently, the EIR fails to provide supporting evidence that such measures would reduce impacts to less than significant levels. Set forth below are a few of the most egregious examples of this legally deficient approach.

A. Biological Resources

In one example, Impact BIO-1 acknowledges significant impacts would result from implementing the proposed General Plan to candidate, sensitive, or special-status plant and animal species and habitats they rely on. Yet to mitigate these impacts the EIR relies on policies that do not unequivocally address them. **Policy NR4B** purports to "[A]void development-related disturbances of sensitive habitats and "special status

species,” but only “encourages” rather than requiring site design and plans that avoid such impacts. Final EIR Appendix A at 5.4-32. Similarly, **Policy NR4F** fails to fully commit to the preservation of environmentally sensitive areas by stating these “should” be retained and protected from urban encroachment, rather than “must.”

Other problematic biological resources policies include (but are not limited to):

Policy NR5D specifies that “uses allowed within riparian corridors *should*” comply with a list of requirements. Final EIR Appendix A at 5.4-27. To ensure that uses within riparian corridors comply, the policy should be revised to state that “uses allowed within riparian corridors *must comply to the greatest extent feasible.*” Policy NR5D should also be revised to prevent development or hardscapes of any kind that conflict with the development buffer requirements of Policy NR5A.

Policy NR6A: *Strive to* preserve and protect existing native oaks, especially valley oaks that are often associated with riparian habitats, in the design and review of development projects. The preservation of stands of trees within developments is generally preferred over preservation of individual trees, with the exception of special-status species, heritage trees, and other trees as may be identified in the City’s Municipal Code. Final EIR Appendix A at 5.4-27.

The use of the phrase “strive to” in this policy fails to demonstrate an unambiguous commitment by the City to preserve and protect the resources addressed. An unequivocal policy would incorporate the following changes:

Policy NR6A: ~~*Strive to*~~ Require the preservation and protection of ~~preserve and protect~~ existing native oaks, especially valley oaks that are often associated with riparian habitats, in the design and review of development projects. The preservation of stands of trees within developments is generally preferred over preservation of individual trees, with the exception of special-status species, heritage trees, and other trees as may be identified in the City’s Municipal Code.

Policy NR7A: Maintain, preserve, and enhance the habitat linkages/wildlife corridors and sensitive habitats that are created by the open-space (“Greenway”) network established by this General Plan. Require development in areas defined as “Greenway” to *consider corridor impacts* and, where necessary, provide alternate usable links between habitat types or areas and/or provide alternate development plans that avoid the open-space network and sensitive habitats. Final EIR Appendix A at 5.4-28.

This policy fails to provide any indication of what developers must do to “consider corridor impacts” and fails to specify what analysis would be required. The proposed policy also allows encroachment on the linkage corridors and replacement links without providing performance standards to ensure equal connection and habitat value. A protective version of this policy would incorporate the following changes:

Policy NR7A: Maintain, preserve, and enhance the habitat linkages/wildlife corridors and sensitive habitats that are created by the open-space (“Greenway”) network established by this General Plan. Require development in areas defined as “Greenway” to provide a biological assessment of potential corridor impacts caused by any encroachment (physically, by light, or by sound) and, where significant impacts are identified necessary, provide alternate usable links between habitat types or areas and/or provide alternate development plans that avoid the open-space network and sensitive habitats.

In addition, the EIR fails to adequately mitigate for admittedly significant cumulative impacts to biological resources. Final EIR Appendix A at 5.4-32. Given that cumulative impacts would be significant, the City has an obligation to identify additional feasible, effective mitigation. As California courts clearly explain, an EIR is inadequate if it fails to suggest feasible mitigation measures that would lessen the Project’s impacts. Pub. Res. Code § 21002; Guidelines § 15126.4; *San Franciscans for Reasonable Growth*, 151 Cal.App.3d at 79. At a minimum, the City must further revise the mitigation measures (in the Biological Resources section and throughout the EIR) so that they are concrete, detailed, and enforceable and their potential effectiveness fully described.

B. Stream and Sacramento River Development Buffers

Figure NR-1 of the Final EIR illustrates the Sacramento River and its main and secondary tributaries, which are subject to the City’s development buffer policy (Chapter 18.48 of the City Zoning Code). Figure NR-4 of the Final EIR illustrates additional secondary tributaries also subject to this policy. The General Plan Update Policy NR5A requires new development to be buffered from streams and the river to protect riparian resources. The EIR then concludes that Impact BIO2 will be less than significant, in part as result of Policy NR5A. EIR at 5.4.4 Impact Discussion BIO-2. However, the EIR contains no analysis to support a conclusion that buffers will be adequate to prevent significant impacts. The City’s riparian buffer scheme, as codified in its Zoning Code, is arbitrary in nature, and no evidence is offered that any proposed buffers are adequate to protect resources, whether already codified by the City or not. Additionally, the City’s process for considering reductions in such required buffers is arbitrary; the City Zoning Code suggests merely that mitigation will be required. Whether or not the current General

Plan and City Code provides for these buffers or their reductions in special cases does not justify extending their applicability for another 20 plus years without adequate CEQA analysis. Such additional analysis could include, as only one example, an accounting of the success of riparian buffers over time in adequately preserving riparian and other sensitive habitats citywide since their adoption, or during such other more recent period that provides useful information.

We further note that the success of General Plan Update Policy NR5A in reducing the potential for Impact BIO2 to be significant, as claimed by the EIR, is reduced because it conflicts with Policy NR5D, which prescribes uses allowed within riparian corridors (and is curiously not mentioned in the EIR's discussion of Impact BIO-2). EIR 5.4.4 Impact Discussion BIO-2. While Policy NR5A proposes to disallow development within a prescribed no-disturbance buffer distance from riparian resources, Policy NR5D instead prescribes that uses allowed within riparian corridors will be subject to generalized non-specific actions such as limiting runoff and sedimentation. It is unclear how both policies can function simultaneously to support the EIR's conclusion that Impact BIO-2 is less than significant; Policy NR5D essentially negates the requirements of Policy NR5A.

C. Greenhouse Gas Emissions

Proposed policies to reduce impacts related to greenhouse gas emissions are equally vague and unenforceable. Of the various general plan policies the EIR relies on to mitigate the proposed Plan's impacts, the Community Design and Development Element ("CDD") policies for the most part begin with the terms "consider", "encourage", and "explore." Final EIR Appendix A at 5.8-25. Transportation Element policies are also riddled with the phrases "strive to" and "consider." As discussed above, this language is unnecessarily vague and would not clearly result in reduced impacts.

For example, Policy NR14A leaves open whether the City will actually adopt a Climate Action Plan. If the City plans to rely on a Climate Action Plan to reduce climate change impacts, the City must revise Policy NR14A. Final EIR Appendix A at 5.8-33. Currently, this measure states:

NR14A – *Consider* developing and adopting a "Climate Action and Resiliency Plan" for Redding. Such plan, if adopted, *should* establish GHG emissions reduction goals for 2035 and 2050, include an effective progress reporting timeline, and update the GHG inventory and forecasts at appropriate intervals. Id.; emphasis added.

As proposed, this measure fails to commit the City to preparing a Climate Action Plan ("CAP") at all, let alone effectively reducing emissions at a rate in compliance with

state law. To reduce greenhouse gas emissions, this policy should be revised to *require* the City to prepare and adopt a CAP within a year timeframe. The policy should also include performance standards for the CAP, including specific, effective, measurable actions to reduce greenhouse gas emissions from municipal and public actions. These actions should focus on reducing emissions from the highest emitting sectors (i.e., building electricity, on-road transportation) and those sectors that will have the highest net increase in emissions over time (i.e., building natural gas, building propane fuel, hearth use, solid waste/landfills, and refrigerants). The CAP should include incentives to encourage changes in behavior and would thus result in a higher rate of success.

In addition, as acknowledged in the EIR, because the proposed General Plan fails to reduce greenhouse gas emissions, the Plan is inconsistent with the State's 2045 GHG reduction target of carbon neutrality. Final EIR Appendix A at 5.8-38.

Furthermore, although the EIR acknowledges that, with implementation of the identified policies, impacts related to greenhouse gas emissions and inconsistency with state law would remain significant, the EIR fails to identify any additional mitigation measures to further minimize impacts. This approach is inexcusable, especially given that the city is already experiencing losses due to climate-enhanced wildfires, drought, and heat, including but not limited to property damage and destruction, increased property insurance costs, loss of recreation and income opportunities, and health hazards, particularly to children and the elderly. Failure to curb and reverse GHG emissions will support more catastrophic and long-term consequences broadly and to the community. Therefore, even seemingly small additions of GHG emissions into the atmosphere must be considered cumulatively considerable. See *Communities for Better Env't v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120 ("the greater the existing environmental problems are, the lower the threshold for treating a project's contribution to cumulative impacts as significant"); see also *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007) ("we cannot afford to ignore even modest contributions to global warming."). The City may not ignore the Project's contribution to climate change and simply state that nothing can be done. Final EIR Appendix A at 5.8-41.

Moreover, the EIR errs in claiming that no mitigation is available. *Id.* As discussed above, the City can mitigate some of the GHG emissions impacts by revising policies in the proposed General Plan to be mandatory rather than optional. The EIR provides no rationale why this mitigation could not be adopted, and there is none.

Numerous agencies and organizations have documented other types of mitigation that are appropriate and feasible for residential and commercial development projects.

For example, the nearby and similarly sized City of Chico, incorporated many mandatory policies throughout its general plan to ensure reduction of greenhouse gas emissions. See, City of Chico General Plan EIR, Chapter 4.14 Energy Use and Climate Change at pdf pages 19 to 24, attached to this letter as Attachment A. In addition, as other commenters have pointed out, the City of Chico made a firm commitment to prepare a Climate Action Plan and adopted a plan in 2020. Available at: <https://chicosustainability.org/climate-action/climate-action-plan/> and attached as Attachment B.

Many other agencies around the state have also adopted measures that:

- Require use of low or zero-emission vehicles, including construction vehicles.
- Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading and waiting areas for ride sharing vehicles, and providing a web site or message board for coordinating rides.
- Create car sharing programs. Accommodations for such programs include providing parking spaces for the car share vehicles at convenient locations accessible by public transportation.
- Provide and expand the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles (e.g., electric vehicle charging facilities and conveniently located alternative fueling stations
- Provide zero emission shuttle service to/from public transit and to various destinations within the City.
- Provide public transit incentives such as free or low-cost monthly transit passes.
- Provide information on energy management services for large energy users.
- Install light emitting diodes (LEDs) for traffic, street and other outdoor lighting.
- Provide education on energy efficiency.
- Reduce the use of pavement and impermeable surfaces.
- Increase the use of shade trees-Implement building codes and incentives that support building efficiency and clean energy

There are also guidance documents that provide a full suite of GHG mitigation measures. The City must review and consider all of the measures listed in these documents in a recirculated EIR, and it must adopt all feasible measures in order to reduce the Project's impacts to a level below significance, or as much as feasible:

- Governor's Office of Planning and Research. 2008. Technical Advisory, CEQA And Climate Change: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available at <https://opr.ca.gov/ceqa/docs/20210720-june08-ceqa.pdf> and attached to this letter as Attachment C.

- California Air Resources Board. 2022 (November). 2022 Scoping Plan. See Appendix D – Local Actions. Available at <https://ww2.arb.ca.gov/resources/documents/2022-scoping-plan-documents> and attached to this letter as Attachment D.

- Attorney General of the State of California. 2010 (January). Sustainability and General Plans: Examples of Policies to Address Climate Change California Attorney General's Office. Available at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/GP_policies.pdf and attached to this letter as Attachment E.

- California Air Pollution Control Officers Association (CAPCOA). 2021 (August). Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity. See Chapter 3, Measures to Reduce GHG Emissions. Available at https://www.airquality.org/ClimateChange/Documents/Handbook%20Public%20Draft_2021-Aug.pdf and attached to this letter as Attachment F.

These documents, in addition to lists of mitigation measures and design features maintained by other organizations, cover a wide range of topics, including (1) land use, urban design, transportation measures; (2) shade and sequestration, including using trees to shade buildings; (3) energy conservation; (4) water conservation; and (5) carbon offset credits. The City must consider all of these types of mitigation measures for the proposed General Plan's significant GHG impacts.

In sum, the EIR errs because it provides vague and unenforceable mitigation measures and provides no evidence that the measures would, in fact, mitigate the impacts as they are supposed to. A revised EIR must provide feasible, effective mitigation measures for the Project's myriad significant impacts to biological resources. With regard to the significant impacts related to greenhouse gas emissions, the City must identify feasible measures (of which there are many) to reduce the Plan's impacts and to be consistent with state law.

II. The Proposed General Plan Conflicts with State Planning And Zoning Law

The State Planning and Zoning Law (Gov't Code § 65000 et seq.) requires that development decisions be consistent with the jurisdiction's general plan. General plans establish long-term goals and policies to guide future land use decisions, thus acting as a "constitution" for future development. *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. As reiterated by the courts, "[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, "[t]he consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

To promote coordinated land use policies and practices, state law requires local governments not just to formulate theoretical land use plans, but also to conform their development and land use projects and approvals with those duly certified plans. *Citizens of Goleta Valley v. Board of Supervisors* (1990), 52 Cal.3d at 570; see also Gov't Code §§ 65860 (requiring consistency of zoning to general plan), 66473.5 & 66474 (requiring consistency of subdivision maps to general plan), and 65359 and 65454 (requiring consistency of specific plan and other development plan and amendments thereto to general plan). It is an abuse of discretion to approve a project that "frustrate[s] the General Plan's goals and policies." *Napa Citizens for Honest Gov't v. Napa County* (2001) 91 Cal.App.4th 342, 379. The project need not present an "outright conflict" with a general plan provision to be considered inconsistent; the determining question is instead whether the project "is compatible with and will not frustrate the General Plan's goals and policies." *Napa Citizens*, 91 Cal.App.4th at 379. In addition, a General Plan must be internally consistent. Gov't Code § 65300.5.

Given these requirements, the introductory language in the General Plan stating that mandatory terms such as "shall" are not actually mandatory at all is inconsistent with state law. That language provides:

Implementation of the policy direction of this General Plan will be affected, in part, by these uncertainties which will occur throughout the life of the General Plan. As such, terms used in this document such as "require", "shall", "prohibit", "protect" and similar words are not intended, for purposes of policy implementation or general plan consistency determinations, to provide absolute certainty,

direction, urgency, or otherwise dictate precise and immediate actions.

Draft General Plan 2045 Introduction, Implementing the General Plan, at pages 13 and 14. This language effectively renders the whole plan hypothetical: if all policies are merely suggestions, and do not provide “direction,” how is the City to decide if future projects are consistent with these policies? In short, this language renders the General Plan a Non-Plan.

While all jurisdictions contend with “uncertainties” in their jurisdictions, General Plan policies are supposed to provide decision-makers with clear direction regarding the City’s vision for development in the future. As the General Plan itself acknowledges:

The general plan is a legal document that serves as the “constitution” for a community’s land use and development activities. California Government Code Section 65300 requires that the general plan be a comprehensive, long-term document for the physical development of the City. It is intended that the plan be specific rather than vague.

Draft General Plan 2045 Introduction, Legal Requirements, at page 3.

Yet, the General Plan contradicts itself—creating an internal inconsistency—by stating that directive words are not intended “to provide absolute certainty, direction, urgency, or otherwise dictate precise and immediate actions.” *Id.* at pages 13 and 14. As discussed above, providing certainty to direct decision-makers’ determinations when considering future development proposals is exactly what General Plan policies are intended to accomplish. This language should be removed from the General Plan.

III. Conclusion

In summary, the General Plan’s policies must be revised so that they are specific and enforceable. In addition, the City must identify additional feasible measures to reduce the General Plan’s anticipated significant impacts related to increased greenhouse gas emissions. Finally, the proposed General Plan introductory language that negates the General Plan’s directive policies should be deleted.

Sincerely,

SHUTE, MIHALY & WEINBERGER LLP



Winter King

Attachments:

Attachment A: City of Chico General Plan EIR, Chapter 4.14 Energy Use and Climate Change

Attachment B: City of Chico Climate Action Plan 2020

Attachment C: Governor's Office of Planning and Research, 2008 Technical Advisory, CEQA And Climate Change: Addressing Climate Change through California Environmental Quality Act (CEQA) Review

Attachment D: California Air Resources Board 2022 Scoping Plan, Appendix D – Local Actions

Attachment E: Attorney General of the State of California, 2010 (January). Sustainability and General Plans: Examples of Policies to Address Climate Change

Attachment F: California Air Pollution Control Officers Association (CAPCOA), 2021 Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity, Chapter 3, Measures to Reduce GHG Emissions

cc: California Attorney General's Office
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